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**OFFICE OF PETITIONS**

In re Application of	:	
Hersperger et al.	:	
Application No. 10/597,753	:	ON APPLICATION FOR
Filed: September 20, 2006	:	PATENT TERM ADJUSTMENT
Docket No. 33647-US-PCT	:	

This is in response to the "PETITION REGARDING PATENT TERM ADJUSTMENT UNDER C.F.R. 1.705(b)," filed September 20, 2010. Applicants submit that the patent term adjustment to be indicated on the patent is five hundred thirty-eight (538) days, not four hundred fifty-two (452) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **five hundred thirty-eight (538) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 21 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 452 days.

Applicants dispute the period of adjustment of 482 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Applicants contend the period of adjustment should be 568 days. Applicants argue that September 20, 2006 is the completion date and should be the date from

which the 14 month period is calculated. The Office calculated the 14 month period from December 14, 2006.

Applicants are correct. The date of completion of all 35 U.S.C. 371 requirements is relevant for purposes of patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1) when the Office has failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than 14 months after the date on which the requirements under 35 U.S.C. 371 were fulfilled. This date is the latest of:

- (A) the date of submission of the basic national fee;
- (B) the date of submission or communication of the copy of the international application;
- (C) the date of submission of the translation of the international application if the international application is not in the English language;
- (D) the date of submission of an oath or declaration of the inventor in compliance with 35 U.S.C. 371(c)(4)
- (E) the earlier of 30 months from the priority date or the date of request for early processing under 35 U.S.C. 371(f) if requested prior to 30 months from the priority date;
- (F) if a request for early processing has not been requested prior to 30 months from the priority date, the date of submission of any translation of the annexes to the international preliminary examination report if the translation of the annexes are filed within the time period set in a Notification of Missing Requirements requiring either an English translation of the international application or an oath or declaration; and
- (G) the date of submission of any surcharge for submitting the oath or declaration later than 30 months from the priority date.

The date of completion in this application is September 20, 2006. It is the date that applicants filed an oath or declaration and paid the surcharge for late submission of the oath/declaration. A review of financial records for this application reveals that \$130.00 was charged to applicants' deposit account on accounting date September 26, 2006. The mailroom date for the payment was September 20, 2006. The payment of the surcharge is the latest of the above-listed events. Therefore, the completion date is September 20, 2006 and entry of a period of adjustment of 538 days (beginning on November 21, 2007, which is the date after 14 months after the

date of completion, to June 10, 2009, the date a restriction requirement was mailed) is warranted. The 482 day period of adjustment is being removed and a 538 day period of adjustment is being entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **five hundred thirty-eight (538) days** (568 days of Office delay - 30 days of Applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions

Enclosure: updated PAIR screen for Application No. 10/597,753



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10/597,753

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## Patent Term Adjustment

Filing or 371(c) Date:	09-20-2006	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	482
A Delays:	482	PTO Manual Adjustments:	86
B Delays:	0	Applicant Delays:	30
C Delays:	0	Total PTA Adjustments:	538

## Patent Term Adjustment History

## Explanation Of Calculations

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
83	11-19-2010	Adjustment of PTA Calculation by PTO	86		0
72	06-21-2010	Mail Notice of Allowance			0
71	06-14-2010	Issue Revision Completed			0
70	06-14-2010	Notice of Allowance Data Verification Completed			0
69	06-14-2010	Case Docketed to Examiner in GAU			0
68	06-07-2010	Allowed Case Returned to the Examiner for Clerical Processing			0
67	06-07-2010	Document Verification			0
66	06-07-2010	Examiner's Amendment Communication			0
65	06-07-2010	Notice of Allowability			0
64	06-02-2010	Examiner Interview Summary Record (PTOL - 413)			0
55	04-08-2010	Information Disclosure Statement considered			0
50	04-20-2010	Letter Requesting Interview with Examiner			0
49	04-22-2010	Date Forwarded to Examiner			0
48	04-19-2010	Response after Non-Final Action			0
47	04-08-2010	Electronic Information Disclosure Statement			0
46	04-20-2010	Mail Examiner Interview Summary (PTOL - 413)			0
45	04-15-2010	Examiner Interview Summary Record (PTOL - 413)			0
44	04-08-2010	Information Disclosure Statement (IDS) Filed			0
43	02-03-2010	Mail Non-Final Rejection			0
42	01-27-2010	Non-Final Rejection			0
41	11-20-2009	Date Forwarded to Examiner			0
40	11-18-2009	Response after Non-Final Action			0
	10-20-				

39	2009	Mail Non-Final Rejection		0
38	10-20-2009	Non-Final Rejection		0
32	08-07-2009	Information Disclosure Statement considered		0
29	08-07-2009	Electronic Information Disclosure Statement	30	27
28	08-13-2009	Date Forwarded to Examiner		0
27	07-08-2009	Response to Election / Restriction Filed		0
26	08-07-2009	Information Disclosure Statement (IDS) Filed		0
25	06-10-2009	Mail Restriction Requirement	482	8
24	06-08-2009	Requirement for Restriction / Election		0
20	01-12-2008	Case Docketed to Examiner in GAU		0
19	12-19-2007	Correspondence Address Change		0
18	10-11-2007	IFW TSS Processing by Tech Center Complete		0
12	07-05-2007	PG-Pub Issue Notification		0
9	04-18-2007	Application Dispatched from OIPE		0
8	12-14-2006	371 Completion Date		0
6	03-28-2007	Notice of DO/EO Acceptance Mailed		0
4	03-27-2007	Sent to Classification Contractor		0

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